

DETAILED ACTION***Specification***

1. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 4 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Berger et al 6,061,617. Berger shows a method for producing ground surfaces by means of a construction machine, in particular a hydraulic excavator with an excavator comprised of one single or a multitude of components including a shovel applicable to the surface of the ground (abstract), and a lifting cylinder for lifting and lowering the excavator equipment; whereby the lifting cylinder 234 of the excavator equipment is actively connected with a least one work pump via a control device 100/130/160 actuated by the operator; and whereby the lifting cylinder is lifted, lowered or blocked depending on the switching position of the control device; characterized in that for compensating the weight of the excavator equipment and for adjusting an approximately (col. 10, lines 49-61) constant pressure of application of the shovel to the surface of the ground as the excavator equipment is moving and working, the lifting side of the lifting cylinder, upon actuation of an actuating element, is automatically acted upon by an adjustable compensation pressure by supplying or evacuating a hydraulic medium.

As concerns claim 4, Berger shows that the position of the point of gravity of the excavator equipment is monitored and the compensation pressure is automatically adapted to any shift in the position of the point of gravity (col. 10, lines 49-61.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al 5,855,159. Yoshida shows a method for producing ground surfaces by means of a construction machine, in particular a hydraulic excavator with an excavator comprised of one single or a multitude of components including a shovel applicable to the surface of the ground (abstract), and a lifting cylinder for lifting and lowering the excavator equipment; whereby the lifting cylinder 24 of the excavator equipment is actively connected with a least one work pump via a control device (figure 2) actuated by the operator; and whereby the lifting cylinder is lifted, lowered or blocked depending on the switching position of the control device; characterized in that for compensating the weight of the excavator equipment and for adjusting an approximately constant pressure of application of the shovel to the surface of the ground as the excavator equipment is moving and working, the lifting side of the lifting cylinder, upon actuation of an actuating element, is automatically acted upon by an adjustable compensation pressure by supplying or evacuating a hydraulic medium.

As concerns claims 2-3, Yoshida shows an additional pump 20 that generates compensation pressure.

As concerns claim 4, Yoshida shows that the position of the point of gravity of the excavator equipment is monitored and the compensation pressure is automatically adapted to any shift in the position of the point of gravity (col. 10, lines 49-61).

Allowable Subject Matter

3. Claims 5, and 7-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is 571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Thomas A. Beach

/Thomas A Beach/

Primary Examiner, Art Unit 3671

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THOMAS A. BEACH
Primary Examiner
Group 3600